

Message Text

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ACTION OES-07

INFO OCT-01 EUR-12 ISO-00 EB-07 COME-00 TRSE-00 INT-05

CG-00 DOTE-00 CIAE-00 DODE-00 PM-04 H-02 INR-07

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TO SECSTATE WASHDC 9081

INFO USMISSION EC BRUSSELS

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY LONDON

AMEMBASSY BONN

AMEMBASSY ROME

AMEMBASSY THE HAGUE

AMEMBASSY MADRID

UNCLAS DUBLIN 988

E. O. 11652: N/A

TAGS: EFIS EI

SUBJ: FISHERIES: DUTCH TRAWLER CASE REFERRED TO EUROPEAN COURT

REF: DUBLIN 962

1. CORK DISTRICT JUSTICE B J CARROLL ANNOUNCED MAY 3 HIS DECISION TO REFER TO THE EUROPEAN COURT OF JUSTICE THE CASE OF THE 10 DUTCH TRAWLERS ARRESTED APRIL 29 FOR HAVING ENTERED AND FISHED ILLEGALLY WITHIN IRELAND'S FISHERY ZONE. THE JUDGE ANNOUNCED THAT A BOND OF 25,000 POUNDS (ABOUT \$42,500) WOULD HAVE TO BE POSTED FOR EACH OF THE 10 DUTCH TRAWLERS PLUS 100 POUNDS (ABOUT \$170) FOR EACH SKIPPER PENDING RULINGS OF THE EUROPEAN COURT. ALTHOUGH TECHNICALLY HE HAD UNCLASSIFIED

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NO POWER TO RELEASE THE SKIPPERS AND TRAWLERS FROM DETENTION AT CORK UNTIL HE HAD REACHED A VERDICT, HE DECLARED THAT IT WOULD BE "INCONGRUOUS" AND "RIDICULOUS" TO HOLD THEM UNDER THE CIRCUMSTANCES. THE STATE'S PROSECUTION COUNSEL ANNOUNCED THAT THE GOI ACCEPTED THE REFERRAL DECISION AS AN ADJUDICATION ON PART OF THE CASE AND AGREED TO RELEASE THE TRAWLERS AND SKIPPERS SUBJECT TO THE POSTING OF BONDS.

2. REGARDING THE LEGAL BASIS FOR JUSTICE CARROLL'S DECISION, THE FOLLOWING IS AN EXTRACT FROM AN ARTICLE APPEARING IN THE IRISH TIMES, MAY 4:

"OPENING HIS JUDGMENT, HE SAID HE HAD CONSIDERED THE SUBMISSION FROM BOTH SIDES AND HAD DECIDED TO REFER THE CASE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 177 OF THE TREATY OF ROME. EXPLAINING THE REASONS FOR THIS DECISION HE SAID THE IRISH FISHERY CONSOLIDATION ACT, 1959, HAD MADE IT AN OFFENCE FOR A FOREIGN FISHING BOAT TO FISH OR ATTEMPT TO FISH WITHIN THE EXCLUSIVE LIMITS OF THE STATE. THE EXCLUSIVE FISHERY LIMITS WERE DEFINED IN SECTION 6 OF THE 1959 ACT AS BEING THREE MILES, BUT BY AN AMENDMENT PASSED IN 1964 THE LIMIT WAS EXTENDED TO 12 MILES FROM THE BASE LINE. THAT HAD BEEN THE POSITION UP TO LAST DECEMBER, WHEN, BY ORDER OF THE GOVERNMENT, THE EXCLUSIVE FISHING LIMITS WERE EXTENDED TO 200 MILES FROM THE BASE LINE.

"THE EEC, HE SAID HAS ITS OWN SET OF PROVISIONS DEALING WITH THE FISHING INDUSTRY AS BETWEEN MEMBER-STATES AND THESE PROVISIONS ARE CONTAINED IN THE TREATY OF ACCESSION. THE REGULATIONS MADE BY THE COUNCIL IN 1970 AND AMENDED IN 1976 LAY DOWN A COMMON STRUCTURAL POLICY FOR THE INDUSTRY.

"ARTICLE 2 OF THE REGULATIONS PROVIDED THAT THE RULES AS APPLIED BY EACH MEMBER STATE SHOULD NOT LEAD TO DIFFERENCES OF TREATMENT OF OTHER MEMBER STATES. IT WAS ALSO PROVIDED THAT MEMBER STATES SHOULD ENSURE IN PARTICULAR LEGAL ACCESS TO, AND USE OF THE FISHING GROUNDS, ALL OTHER VESSELS FLYING UNCLASSIFIED

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THE FLAG OF A MEMBER STATE. WHERE THERE WAS A RISK OF OVER-FISHING IN A MEMBER STATE, THE EEC COULD ADOPT THE NECESSARY CONSERVATION MEASURES.

"ARTICLE 100 OF THE TREATY OF ACCESS AUTHORISED MEMBER STATES TO RESTRICT FISHING IN WATERS OF THEIR JURISDICTION UP TO 1982 AND WHICH IN THE REPUBLIC'S CASE WAS A 12-MILE LIMIT.

"DISTRICT JUSTICE CARROLL RECALLED THAT THE MINISTER FOR FISHERIES HAD INTRODUCED TWO ORDERS WHICH HAD THE EFFECT OF PROHIBITING FISHING IN THE AREA DEFINED BY THE ORDERS BY BOATS WHOSE ENGINE POWER WAS IN EXCESS OF 1100 H.P. AND WHOSE LENGTH EXCEEDED 33 METRES (110 FEET). THE AREA REFERRED TO WAS THE SO-CALLED 50-MILE LIMIT, BUT FROM THE EVIDENCE GIVEN TO THE COURT, HE UNDERSTOOD THE LIMIT IN PLACES EXTENDED TO 70 MILES.

"IT WAS FOR AN ALLEGED BREACH OF THESE ORDERS THAT THE DEFENDANTS WERE BEING PROSECUTED. THE DEFENDANTS CLAIMED,

HOWEVER, THAT MEMBER STATES WERE COVERED BY THE 12-MILE LIMIT;
THAT THE MINISTER'S ORDER WAS NOT VALID, INsofar AS IT
RELATED TO OTHER EEC COUNTRIES AND THAT ANY CONSERVATION
SHOULD BE MADE BY THE EEC; AND THAT EVEN IF THE
MINISTER HAD POWER TO MAKE SUCH AN ORDER, IT WAS DISCRIMINATORY
BETWEEN MEMBER STATES AND IN BREACH OF ARTICLE 2 OF THE
REGULATIONS.

"ON THE OTHER HAND, HE SAID, IT WAS HELD BY THE MINISTER THAT
THE ORDER WAS NOT DISCRIMINATORY IN THAT IT INCLUDED IRISH
FISHERMEN. THE MINISTER WAS FURTHER CONTENDING THAT WHILE
RIGHTS WERE GIVEN TO THE COUNCIL OF THE EEC UNDER THE
REGULATIONS TO MAKE CONSERVATION ORDERS, THAT DID NOT ABRO-
GATE THE MINISTER'S RIGHT TO INTRODUCE LEGISLATION HERE.

"HE THEN REFERRED THE CASE TO THE EUROPEAN COURT OF JUSTICE."

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3. THE JUDGE STATED THAT HE WOULD NEED TO COMPLETE HIS DRAFT
SUBMISSION TO THE EUROPEAN COURT AND HE THEREFORE ADJOURNED
THE CASE FOR TWO WEEKS. RENDAHL

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